

**Before the
FEDERAL TRADE COMMISSION
Washington, DC**

**IN THE MATTER OF
ENDORSEMENT GUIDES REVIEW
Project No. P034520**

COMMENTS OF PRODUCT PARTNERS, LLC

Product Partners, LLC ("Product Partners") welcomes this opportunity to respond to the Federal Trade Commission's request for comment on issues relating to its Guides Concerning the Use of Endorsements and Testimonials in Advertising ("Guides").

Since 1998, we have helped millions of people improve their health and wellness with a variety of fitness, weight loss and nutritional products using only proven tools that combine portion control, physical activity, and good nutrition. No short-cuts here.

Our business is founded on the premise that consistent exercise and smart eating is the long term way to get lean and healthy. But to attract people to that mentality takes inspiration. Our real success stories are that inspiration. Real people using the product as intended to achieve incredible, healthy, results. No magic pills, no expensive equipment. Just inspiration and support to stay with the program.

The responsible use of truthful and not misleading testimonials is a central and critical component of our ability to motivate people to accept exercise and sensible eating as effective for several reasons. Most important, as our loyal customers repeatedly confirm, the testimonials inspire them that it's possible to succeed if they adhere to both the exercise and nutritional components of our programs. The "aspirational" examples of successful results portrayed in the testimonials continually remind our customers of their own fitness goals and motivate them to try and achieve similar results. As a dramatic example, we have learned that passive viewers, those that have not even bought our products, have been inspired by our message and taken action of their own accord. We call that "collateral success."

Product Partners commends the Commission for its success in using its enforcement authority to penalize companies for publishing testimonials conveying false or misleading claims, especially in the area of weight loss. We also enthusiastically support this examination of the important issues associated with its policies and appreciate this opportunity to comment. As is more fully described below, the primary purpose of this comment is to explain why the Commission should not change its policy in a manner that would restrict the ability of companies to present the true experiences of actual consumers without conveying a false or misleading claim. It is further critical that the FTC's policies not infringe our constitutional right to portray the honest experiences of such consumers obtained and featured in accordance with the current Guides, which include a disclaimer making it clear that no single testimonial represents a result that is "typical."

I. Product Partners' Interest in This Proceeding

Through its Beachbody® brand, Product Partners advertises and markets fitness and weight loss strategies through a variety of media and advertising formats, including program-length television commercials ("infomercials"), short-form direct response television advertisements, and Internet advertising and marketing. Our marketing efforts include true and proper testimonials, as this direct response advertising constitutes the primary means for providing information about our products and the healthy results that can be obtained by following them.

II. Product Partners Supports the Electronic Retailing Association and the Comments It Submitted Jointly with the Council for Responsible Nutrition

Product Partners is an active member of the Electronic Retailing Association ("ERA"). Our President sits on ERA's Board of Directors and participates in the development of policies and programs designed to promote honest and responsible advertising and marketing practices. We fully support ERA's efforts in this regard, including, for example, the Electronic Retailing Self-Regulation Program ("ERSP"). We are aware of the comments submitted jointly by ERA and the Council for Responsible Nutrition ("CRN") and fully support their assertions that: (1) the revisions under consideration raise substantial constitutional concerns and would unnecessarily and negatively affect advertisers and rob consumers of the inspiration they need to pursue a healthier lifestyle of exercise and sensible eating; and (2) the print ad copy tests released by the Commission are flawed.

III. FTC's Policy Must Permit the Use of a Testimonial That Does Not Reflect a Typical Result, Because the Variables of Typicality Are Virtually Infinite

As noted above, the use of inspirational testimonials has been a fundamental component of our advertising since the company's launch in 1998. Their role goes beyond merely motivate potential consumers to purchase the product. Specifically, they are inspirational – showing each viewer what is possible with the decision to get healthy, and the commitment to see that decision through to succeed. Because all our fitness and weight loss systems are based on the premise that a person must regularly exercise and follow a sensible diet in order to lose weight in a healthy way, a statement which we clearly and prominently display in our advertising, the benefit of the product is directly tied to a person's willingness to stay the course and consistently follow the recommended program. Product Partners never has, and never will, sell a “magic pill” or promise another form of a quick fix to lose weight and lead a healthy lifestyle; we purposely develop our advertising to show that hard work, sweat, a balanced diet and dedication are the only avenues to achieve true results. Hence, staying motivated is key, and showing actual results that consumers truly obtained is a responsible and ethical way of encouraging all of our customers to remain motivated to achieve both short and long-term results.

It is reasonable to assume that most people understand that the weight loss result obtained by one person does not necessarily reflect the weight loss that he or she will experience. If we showed an inspirational example of a woman who lost 100 pounds, it is reasonable that a person who weighs 150 pounds will know they will not lose 100 pounds by working out and eating right, but that they could lose the 20 or 30 that they want. A 400 pound person could equally see that there is hope for them to lose over 200 pounds. The variables that affect the rate and extent to which a person can lose weight are so varied and well-known to the viewer (including, among other things, genetic predispositions, body type, and the current level of obesity of the individual), that it is difficult to believe that consumers are not capable of understanding that their result may be different from those that are shown in advertising depending on multiple factors, but that success nonetheless, is absolutely achievable.

